



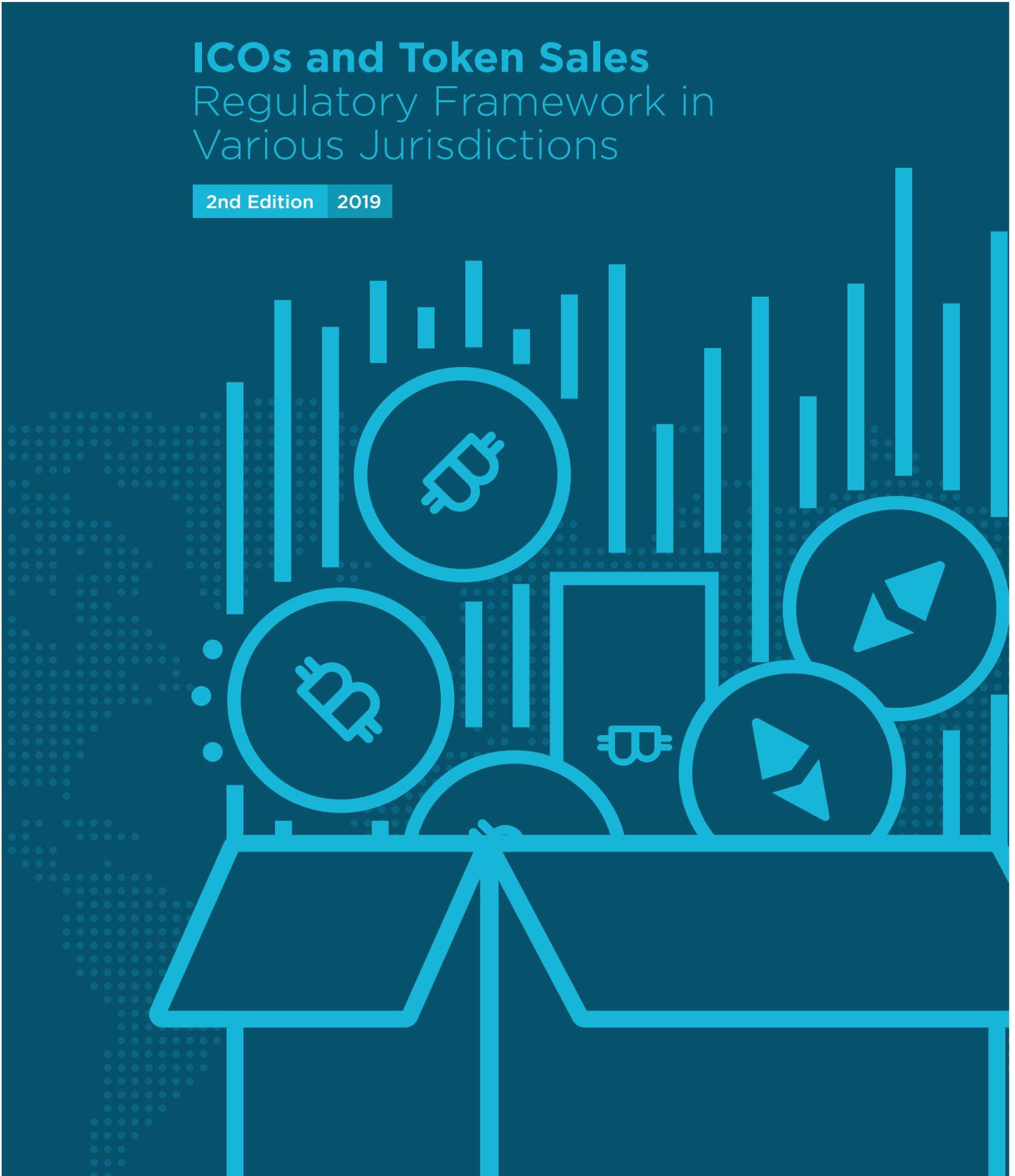
**LEGALINK**

INTERNATIONAL BUT PERSONAL

# ICOs and Token Sales

## Regulatory Framework in Various Jurisdictions

2nd Edition 2019



# INDEX

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## THE **13** QUESTIONS WE ASKED

- 1 Does your country allow or prohibit ICOs and Token Sales?
- 2 Does your country regulate ICOs and Token Sales?
- 3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?
- 4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
- 5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.
- 6 If a foreign entity conducts an ICO and offers tokens to residents of your country, will your government require the foreign entity to comply with any rules and regulations? If so, please provide an overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.
- 7 What is the legal nature of crypto in your country (for example, is crypto considered a security, commodity, currency etc.)?
- 8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).
- 9 In your country, are there any significant commercial disputes or civil cases (non- government) involving crypto? If so, please provide an executive summary of the most significant dispute(s)/ case(s).
- 10 Does your jurisdiction tax crypto transactions? If so, please provide a basic explanation of how and at what rate they are taxed.
- 11 Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges? If so, please provide an overview of the regulation.
- 12 Does your country offer any unique or important benefit to crypto-focused companies (for example, clear regulatory guidance)? If so, please describe the unique/ important benefit.
- 13 Please identify a point of contact at your firm for cryptocurrency- related matters.

# MALAYSIA

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1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and token sales are allowed in Malaysia.

2 Does your country regulate ICOs and Token Sales?

An ICO which

- (a) is traded in a place or on a facility where offers to sell, purchase, or exchange the digital currency are regularly made or accepted;
- (b) creates the expectation of a return from the trading, conversion or redemption of the digital currency, or from appreciation in the value of the digital currency; and
- (c) is not issued or guaranteed by any government body or central bank as may be specified by the Securities Commission Malaysia;

is prescribed as a security for the purposes of the securities laws.

A token sale which represents a right or interest of a person in any arrangement made for the purpose of, or having the effect of, providing facilities for the person, where

- (a) the person received the digital token in exchange for a consideration;
- (b) the consideration or contribution from the person, and the income or returns, are pooled;
- (c) the income or returns of the arrangements are generated from the acquisition, holding, management or disposal of any property or assets or business activities;
- (d) the person expects a return in any form from the trading, conversion or redemption of the digital token or the appreciation in the value of the digital token;
- (e) the person does not have day-to-day control over the management of the property, assets or business

# MALAYSIA

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of the arrangement; and  
(f) the digital token is not issued or guaranteed by any government body or central bank as may be specified by the Securities Commission Malaysia;  
is prescribed as a security for the purposes of the securities laws.

**3** If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Offers of coins as 'digital currency' and tokens as 'digital tokens' are prescribed as securities which are regulated by the Securities Commission Malaysia.

**4** If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

The legal framework will only be in place by the end of first quarter of 2019. However, the instruments and their associated activities must be first approved by the Securities Commission Malaysia, subject to compliance with the relevant securities laws and regulations.

**5** Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The Ministry of Finance of Malaysia views digital assets, as well as their underlying blockchain technologies, as having the potential to bring about innovation in both old and new industries. It is an alternative fundraising avenue for entrepreneurs and new businesses, and an alternate asset class for investors.

Any person offering an ICO or token sale without the approval of the Securities Commission Malaysia may be

# MALAYSIA

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punished, on conviction, with imprisonment not exceeding ten years and a fine not exceeding RM10 million.

**6** If a foreign entity conducts an ICO and offers tokens to residents of your country, will your government require the foreign entity to comply with any rules and regulations? If so, please provide an overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.

It is uncertain for the time being. There will be more certainty upon the availability of the legal framework.

**7** What is the legal nature of crypto in your country (for example, is crypto considered a security, commodity, currency etc.)?

It is a form of prescribed securities.

**8** Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).

There has never been any prosecution.

**9** In your country, are

No.

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there any significant commercial disputes or civil cases (non-government) involving crypto? If so, please provide an executive summary of the most significant dispute(s)/ case(s).

**10** Does your jurisdiction tax crypto transactions? If so, please provide a basic explanation of how and at what rate they are taxed.

It is uncertain at this juncture. The regulatory framework will be issued by the end of the first quarter of 2019.

**11** Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges? If so, please provide an overview of the regulation.

It is regulated under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019. The framework will be in place by end of the first quarter of this year.

**12** Does your country offer any unique or important benefit to crypto-focused companies (for example, clear regulatory guidance)? If so, please describe the unique/ important benefit.

There will be clear regulatory guidance upon the availability of the framework by the end of the first quarter of 2019.

**13** Please identify a point of contact at your firm for cryptocurrency-related matters.

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